

IN THE CHANCERY COURT FOR DAVIDSON COUNTY, TENNESSEE FOR THE TWENTIETH  
JUDICIAL DISTRICT AT NASHVILLE

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STATE OF TENNESSEE,  
Petitioner,

v.

MIKE WATSON, individually and  
formerly doing business as CURVES  
FOR WOMEN OF SEYMOUR, and  
RUTH WATSON, individually and  
formerly doing business as CURVES  
FOR WOMEN,

Respondent.

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**ASSURANCE OF VOLUNTARY COMPLIANCE**

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THIS ASSURANCE OF VOLUNTARY COMPLIANCE is given by Respondents, MIKE WATSON and RUTH WATSON, both individually and formerly doing business as CURVES FOR WOMEN OF SEYMOUR, (collectively referred to as "Curves for Women") located in Seymour, Tennessee, to PAUL G. SUMMERS, Attorney General and Reporter for the State of Tennessee, and to the Director of the Tennessee Division of Consumer Affairs of the Department of Commerce and Insurance.

WITNESSETH:

Some of the facts and circumstances surrounding the execution of this Assurance are as follows:

A. The Division and the Attorney General have conducted an investigation of certain business practices of Respondents. This investigation was limited to the practice of operating a health club without a valid

certificate of registration from the Division and selling a health club without providing the legally required written notice to the Division. As a result of the investigation, the Division and the Attorney General have determined that Respondents have violated the Tennessee Consumer Protection Act of 1977, Tenn. Code Ann. §§ 47-18-101, *et seq.* and the Tennessee health club statutes located at Tenn. Code Ann. §§ 47-18-301, *et seq.*

B. This Assurance addresses only Respondents' practice of operating a health club without a valid certificate of registration from the Division and Respondents' failure to provide the legally required written notification of the sale of a health club to the Division. The Assurance does not resolve any other issues not connected with operating without a registration or the failure to provide written notification of the sale of the health club to the Division.

C. Respondents neither admit nor deny any wrongdoing. Pursuant to Tenn. Code Ann. § 47-18-107(a), entering into an Assurance shall not be considered an admission of a prior violation of the Tennessee Consumer Protection Act of 1977.

D. Pursuant to Tenn. Code Ann. § 47-18-107, Respondents desire to give this Assurance, and the Attorney General desires to accept it, in order to avoid the costs and expense of litigation.

NOW, THEREFORE, acting pursuant to Tenn. Code Ann. § 47-18-107, Respondents give, and the Attorney General accepts, the following assurances:

## **I. DEFINITIONS**

1.1 As used in this Assurance and accompanying Agreed Order, the following words or terms shall have the following meanings:

A "Assurance of Voluntary Compliance" or "Assurance" shall refer to this document entitled Assurance of Voluntary Compliance in the matter of State of *Tennessee v. Mike Watson, individually and formerly doing business as Curves for Women of Seymour and Ruth Watson, individually and formerly doing business as Curves for Women of Seymour.*

B "Consumer" means any person, a natural person, individual, governmental agency, partnership, corporation, trust, estate, incorporated or unincorporated association, and any other legal or commercial entity however organized.

C "Division" or "Division of Consumer Affairs" shall refer to the Tennessee Division of Consumer Affairs of the Department of Commerce and Insurance.

D "Respondents" or "Curves for Women" shall refer to, Mike and Ruth Watson, both individually and formerly doing business as Curves for Women of Seymour, and/or any and all officers, owners, employees, agents and representatives of Mike and Ruth Watson.

E "Petitioner", "State of Tennessee", or "Attorney General" shall refer to the Tennessee Attorney General & Reporter and the Office of the Tennessee Attorney General.

F "Tennessee Consumer Protection Act" or "Consumer Act" shall refer to the Tennessee Consumer Protection Act of 1977 and related statutes found at Tenn. Code Ann. §§ 47-18-101, *et seq.*

G "Tennessee Health Club Act" or "Health Club Act" shall refer to the statutes relating to the health clubs found at Tenn. Code Ann. § 47-18-301, *et seq.*

## **II. JURISDICTION**

2.1 The parties agree that the Chancery Court of Davidson County, Tennessee has jurisdiction over the subject matter of this case and over the persons of the Respondents for the purposes of entering this Assurance and the accompanying Agreed Order. Jurisdiction is retained by the Court for the purpose of enabling the State to apply to the Court for such further orders and directions as may be necessary or appropriate for the construction, modification or execution of this Assurance and the accompanying Agreed Order, including the enforcement or compliance therewith and penalties for violation thereof. Pursuant to Tenn. Code Ann. § 47-18-107(d), the State may reopen this Assurance at any time. Respondents agree to pay all court costs and reasonable attorneys' fees associated with any successful petitions to enforce any provision of this Assurance and the accompanying Agreed Order against Respondents.

## **III. VENUE**

3.1 Pursuant to Tenn. Code Ann. § 47-18-107, venue as to all matters between the parties relating hereto or arising out of this Assurance is solely in the Chancery Court of Davidson County, Tennessee.

#### **IV. PARTIES**

4.1 Respondents Mike Watson and Ruth Watson, both individually and formerly doing business as Curves for Women, of Seymour, warrant and represent that they are the proper parties to this Assurance. Respondents further acknowledge that they understand the State expressly relies on this representation and warranty, and that if it is inaccurate, may move to vacate or set aside this Assurance, or may request that Respondents be held in contempt.

4.2 This Assurance shall apply to Respondents whether acting through any corporation, subsidiary, affiliate, division or other device or through any officer, director, employee, agent successor, assign or any other person acting in concert or participating with them.

#### **V. PERMANENT INJUNCTION**

It is hereby agreed upon approval of the Court, Respondents shall be permanently and forever, enjoined and bound from directly or indirectly engaging in any of the practices set forth herein:

5.1 Engaging in any unfair or deceptive acts or practices in the conduct of its business. Respondents shall abide by all provisions of the Tennessee Consumer Protection Act of 1977, Tenn. Code Ann. §§ 47-18-101, *et seq.*, including, but not limited to, the sections of the Act regulating health clubs, Tenn. Code Ann. § 47-18-301 *et seq.*, ("the Health Club Act").

5.2 Operating a health club unless registered with the Division pursuant to Tenn. Code Ann. § 47-18-302. Further, for the duration of Respondents' operation as a "health club" pursuant to Tenn. Code Ann. § 47-18-301, it shall timely renew its registration with the Division prior to the expiration of a valid registration.

5.3 Representing or implying to consumers that health club agreements entered into while Respondents operated a health club without being registered with the Division are enforceable against consumers.

5.4 Taking collection action against any consumer who entered into a health club agreement while Curves for Women was operating without being registered.

5.5 Referring or selling for purposes of debt collection any consumer accounts if the individual consumers entered into a health club agreement while Curves for Women was operating without being registered.

5.6 Causing, directly or indirectly, any negative entries to be placed on a consumer's credit history or record, if the consumer entered into a health club agreement during the time period that the Respondents' health club was unregistered. Further, Respondents shall correct any consumers credit history or record on which Respondents placed negative entries if the health club agreement was entered into when the Curves for Women was

unregistered.

5.7 Failing to provide written notice, pursuant to Tenn. Code Ann. § 47-18-313(c), to the Division within ten (10) days after a health club or any of its locations ceases to conduct business.

5.8 Failing to provide written notice, pursuant to Tenn. Code Ann. § 47-18-313 (b) to the Division within ten (10) days after any change in ownership or the sale of a health club or any of its locations.

## **VI. HEALTH CLUB AGREEMENTS/RESTITUTION**

6.1 Respondents agree to provide written notification of the unenforceability of the Curves for Women health club agreements within five (5) days of entry of this Order to the new owners of Curves for Women. The notice shall inform the purchaser that all health club agreements purchased from the Respondents are unenforceable pursuant to the Health Club Act and that consumers must receive refunds if the consumer elects to cancel.

6.2 The Respondents agree that if any consumers come forward indicating they desire to cancel their health club agreements with the new owners of Curves for Women and the new owners fail to permit the consumer to cancel or fail to provide a refund as required by the Health Club Act, the Respondents shall be required to provide a full refund to any such consumers.

6.3 Within five (5) days of canceling or refund monies to a consumer under paragraph 6.2, Respondents shall provide the Division notice of any consumers that they provide refunds or cancellations to pursuant to paragraph 6.2. Such notice shall include the consumer's name, address and amount of any refund.

6.4 Further, Respondents agree not to take any action to enforce any of the health club agreements against any consumer whose health club agreement was sold to Ms. Vera Hatmaker on June 8, 1999.

6.5 Nothing herein restricts the applicability of Tenn. Code Ann. § 47-18-303 making contracts unenforceable if entered into under the terms set forth therein. Any consumer may cancel such contract and receive a full refund if the consumer entered into a health club

agreement under the conditions set forth in that statute.

## **VII. PAYMENT OF ATTORNEYS' FEES AND COSTS TO THE STATE**

7.1 Pursuant to Tenn. Code Ann. § 47-18-108(b)(4) Respondents shall pay the sum of One Thousand Dollars and No/100 (\$1,000.00) to the State of Tennessee to reimburse the State for attorneys' fees and costs of investigation, prosecution and monitoring for compliance of this matter, which may be used for consumer protection purposes at the sole discretion of the Attorney General. The attorneys' fee payment shall be paid as set forth in paragraph 9.2.

## **VIII. CIVIL PENALTIES**

8.1 Pursuant to Tenn. Code Ann. § 47-18-108(b)(3), Respondents shall pay a civil penalty of One Hundred Dollars (\$100.00) to the State of Tennessee for every full month that Respondents operated without registration from the Division. Respondents certify that, as of the date of this Assurance, Respondents have operated a health club without registration for six (6) full months. Respondents shall therefore pay the sum of Six Hundred Dollars (\$600.00) to the State of Tennessee as civil penalties for Respondents' violations of the Tennessee Health Club Act. This civil penalty shall be paid as set forth in paragraph 9.2. The State expressly relies upon Respondents' representation regarding the number of months that they have been operating without registration, and if this representation is false or misleading the State may move to vacate or set aside this Assurance or request that Respondents be held in contempt.

8.2 Pursuant to Tenn. Code Ann. § 47-18-108(b)(3), Respondents shall pay a civil penalty of One Thousand Dollars (\$1,000.00) to the State of Tennessee for selling an unregistered health club and for failing to provide the legally required written notice of any health club's sale to the Division. This civil penalty shall be paid as set forth in paragraph 9.2.

## **IX. FORBEARANCE ON EXECUTION AND DEFAULT**

9.1 No execution or garnishment on the monetary portion of this Assurance and Agreed Order shall issue so long as the Respondents make payment in accordance with paragraph 9.2 herein. In the event Respondents fail to make any such payment within thirty (30) days of its due date, the entire balance of this Assurance and Agreed Order then remaining may be collected by execution, garnishment or other legal process, together with interest pursuant to Tenn. Code Ann. § 47-14-121 from the date of entry of this Assurance and Agreed Order. Respondents agree to pay attorneys' fees and costs associated with any such collection efforts.

9.2 Payment shall be made to the Consumer Protection Division, Office of Attorney General as follows: \$200.00 due March 1, 2000 and the first of each month thereafter. The first payments shall be applied to the attorneys' fee obligation and once that is complete payments shall be applied to the civil penalty.

9.3 Respondents shall be required to retain proof of all payments to the State in the form of canceled

checks for each payment for a full two (2) years following their final payment to the State. Respondents shall provide proof of all payments to the State within ten (10) days of a request for such information.

9.4 Respondents agree that any and all such sums are non-dischargeable in a bankruptcy proceeding given the same are punitive in nature.

## **X. MONITORING AND COMPLIANCE**

10.1 Upon request, Respondents agree to provide books, records and documents to the State at any time, and to informally, or formally under oath, provide other information and/or testimony to the State relating to compliance with this Assurance. Respondents shall make any requested information available within one (1) week of the request at the Office of the Attorney General, 425 Fifth Avenue North, Nashville, Tennessee or at such other location as is agreeable in writing to Respondents and the Attorney General. This section shall in no way limit the Attorney General's or the Division's right to obtain documents, information or testimony pursuant to any federal or state law, regulation or rule.

## **XI. PRIVATE RIGHT OF ACTION**

11.1 Pursuant to Tenn. Code Ann. §§ 47-18-109 and 47-18-107(e), nothing in this Assurance shall be construed to affect any private right of action that a consumer or other person may hold against Respondents.

## **XII. PENALTY FOR FAILURE TO COMPLY**

12.1 Pursuant to Tenn. Code Ann. § 47-18-107(c), Respondents understand that failure to comply with the terms of this Assurance is *prima facie* evidence of a violation of the Tennessee Consumer Protection Act.

12.2 Pursuant to Tenn. Code Ann. § 47-18-107(f) Respondents understand that any knowing violation of the terms of this Assurance is punishable by civil penalties of not more than One Thousand Dollars (\$1,000.00) for each violation, in addition to any other appropriate sanctions, including, but not limited to, contempt sanctions and the imposition of reasonable attorneys' fees and costs. Respondents agree to pay all court costs and reasonable attorneys'

fees associated with any successful petitions to enforce this Assurance and Agreed Order against Respondents.

## **XIII. ADDITIONAL REPRESENTATIONS AND WARRANTIES**

13.1 Neither Respondents nor anyone acting on their behalf shall state or imply or cause to be stated or implied that the Attorney General, the Division, or any other governmental unit of the State of Tennessee has approved, sanctioned, or authorized any practice, act, or conduct of the Respondents.

13.2 The parties represent and warrant, each to the other, that the execution and delivery of this Assurance is their free and voluntary act, that this Assurance is the result of good faith negotiations, and that the parties believe that the terms of this Assurance are fair and reasonable. The parties warrant that they will implement the terms of this Assurance in good faith. Further, no offer, agreements, or inducements of any nature whatsoever have been made to it by the State of Tennessee, its attorneys or any employees of the Attorney General's Office or the Division of Consumer Affairs to procure this Assurance.

13.3 Respondents represent that the signatories to this Assurance have authority to act for and bind the Respondents.

13.4 Respondents shall not participate, directly or indirectly, in any activity to form a separate entity for the purpose of engaging in acts set forth and prohibited in this Assurance or for any other purpose which would otherwise circumvent any part of this Assurance or the spirit of this Assurance.

13.5 Acceptance of this Assurance by the State shall not be deemed approval by the State of any of Respondents' business practices.

13.6 Within thirty (30) days of the entry of this Assurance, Respondents shall submit a copy of this Assurance to each of their employees, officers and directors. Within sixty (60) days, Respondents shall provide a certification to the State that the Assurance has been provided to necessary parties.

13.7 Mike Watson and Ruth Watson represent that Mike Watson, Ruth Watson and Curves for Women are the true legal names of the entities and Respondents are the proper

parties to enter into this Assurance and the accompanying Agreed Order. Respondents further acknowledge that the State expressly relies upon this representation and warranty, and if it is false, misleading, deceptive, unfair, or inaccurate, the State has the right to move to vacate or set aside this Assurance and Agreed Order, and request that Respondents be held in contempt if the State so elects.

13.8 This Assurance and the accompanying Agreed Order may only be enforced by the parties hereto.

13.9 The titles and headers to each section of this Assurance are for convenience purposes only and are not intended by the parties to lend meaning to the actual provisions of the Assurance.

13.10 This Assurance and the accompanying Agreed Order constitutes the complete agreement of the parties with regard to the resolution of the matters set forth in the State's Petition. This Assurance is limited to resolving only matters set forth in the State's Petition.

13.11 This Assurance shall be binding and effective against Respondents upon both parties signing the Assurance. This Assurance shall have no effect against the State if it is not approved by the Court.



13.12 Nothing in this Assurance shall be construed to limit the authority of the Attorney General to protect the interests of the State and the people of the State of Tennessee. In addition, this Assurance shall not bar the State or any other governmental entity from enforcing other laws, regulations or rules against Respondents.

13.13 This document shall not be construed against the "drafter" because both parties participated in the drafting of this document.

13.14 Nothing in this Assurance constitutes an agreement by the State of Tennessee concerning the characterization of the amounts paid hereunder for the purposes of any proceeding under the Internal Revenue Code or any state tax laws.

#### **XIV. COMPLIANCE WITH OTHER LAWS**

14.1 Nothing in this Assurance and Order shall be construed as relieving Respondents from complying with any state or federal law(s), regulation(s), or rule(s) nor shall

any of the provisions of this Assurance and Order be deemed to be permission to engage in any acts or practices prohibited by such law(s), regulation(s) or rule(s).

#### **XV. FILING OF ASSURANCE**

15.1 Immediately upon the execution of this Assurance, the Attorney General or his designated representative shall prepare and file in the Chancery Court for Davidson County a Petition, Agreed Order and this Assurance for the Court's approval. Respondents hereby waive any and all rights which they may have to be heard in connection with judicial proceedings upon said Petition. Respondents agree to pay all court costs of filing such Petition, Assurance and Agreed Order. The Assurance, annexed to the Agreed Order, is made a part of and is incorporated into the Agreed Order upon approval of the Court.

#### **XVI. NOTIFICATION TO STATE**

16.1 Any notices required to be sent by this Assurance shall be sent by United States mail, certified mail return receipt requested or other nationally recognized courier service that provides for tracking services and identification of the person signing for the document. The documents shall be sent to the following addresses:

For the State:  
Carolyn Smith  
Assistant Attorney General  
Office of the Attorney General  
Consumer Protection Division  
425 Fifth Avenue North, 2nd Floor  
Nashville, TN 37243

For the Respondent:  
Mike and Ruth Watson  
P.O. Box 5971  
Sevierville, TN 37862

**XVII. APPLICABILITY OF ASSURANCE TO RESPONDENT**

**AND THEIR SUCCESSORS**

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17.1 Respondents agree that the duties, responsibilities, burdens and obligations undertaken in connection with this Assurance shall apply to Respondents, as well as their agents, assigns, representatives, employees, successors, sales staff and any other persons or entities acting directly or indirectly on their behalf.

**XVIII. WAIVER OF COUNSEL**

18.1 Respondents acknowledge that they have been advised of their right to consult with or otherwise retain legal counsel in connection with this Assurance. If Respondents do not consult legal counsel, they expressly waive their right to do so.

**XIX. COSTS**

19.1 All costs associated with the filing and distribution of this Assurance and any other incidental costs or expenses incurred thereby shall be borne by Respondents. No costs shall be taxed against the State as provided by Tenn. Code Ann. § 47-18-116. No discretionary costs may be taxed against the State.

IN WITNESS HEREOF, the parties have set their hands as of this date first aforementioned.